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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,703	11/12/2003	Marlies Regiert	REGIERT ET AL-2	9249
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WILLIAM COLLARD			ISSAC, ROY P	
COLLARD & ROE, P.C.			ART UNIT	
1077 NORTHERN BOULEVARD			PAPER NUMBER	
ROSLYN, NY 11576			1623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/712,703	<b>Applicant(s)</b> REGIERT ET AL.	
	<b>Examiner</b> Roy P. Issac	<b>Art Unit</b> 1623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/30/04 &amp; 3/05/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION*****Status of the Application***

This application claims priority under U.S.C § 119 to GERMANY 102 53 042.4, filed 11/14/2002. Claims 1-18 are currently pending and are examined on the merits herein. Certified copy of the priority document, GERMANY 102 53 042.4, filed 11/14/2002, have been filed in the instant application. The priority document is in German and no English translation has been filed.

***Claim Objections***

Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specification defines vitamin F; "Therefore, for the purposes of this invention, vitamin F is preferably understood as meaning EFA, in particular omega-6-polyunsaturated fatty acid." (Page 1, Paragraph 3). Thus claim 2 does not further limit claim 1.

Claims 12 and 14 contains the trademark/trade names BELSIL<sup>®</sup>, Arlacel and Hostacerin. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain

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since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name Belsil is used to identify/describe cyclic silicone oils and, the tradename Arlacel is used to identify/describe sorbitan sesquioleate and Hostacerin is used to describe/identify polyglyceryl-2-sesquioleate, and, accordingly, the identification/description is indefinite.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 8's recitation of terms "substances which care for the skin," "humectant agents," "gel formers," "preservatives," "bactericides," "antioxidants," "sunscreen filters," "self-tanning agents," "additives," "auxillaries," "consistency-imparting agents," "fillers" "alcohol" "stabilizers" and "salts" render the claim indefinite. These terms are not clearly defined in the specification and each term potentially includes large classes of compounds or compositions. Hence, one of ordinary skill in the art

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could not ascertain and interpret the metes and bounds of the patent protection desired as to the claimed preparation by the recited terms herein.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Wimmer et. al. (U.S. Patent No. 6,025,510, Feb, 2000; PTO-1449, Included by the applicant).

The '510 patent discloses the formation of complexes of cyclodextrin (CD) and vegetable oils that have high content of essential fatty acids, in particular linoleic acid and linolenic acid. (Column 3, lines 20-45 and Table 1). Note that essential fatty acids are also known as vitamin F. Examples of complex formation between alpha, beta and gamma cyclodextrins are given in Example 1. (column 4, line 58 to Column 5, line 14). Example 11 shows the use of additives with cyclodextrin-evening primrose oil. (Column 8, lines 1 to 14). The weight ratio of vegetable oils and CD were disclosed as between 1:20 and 1:0.3. As the

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following calculations show, these ratios are within ranges claimed in the present invention.

The '510 patent discloses the composition of various fatty acids present in Evening primrose oil, Borage oil and Blackcurrant oil. Evening Primrose oil contains of 74.2% linoleic acid and 8-12% linolenic acid, both essential fatty acids. Borage oil contains 40.4% of linoleic acid and 19-25% of linolenic acid. Blackcurrant oil contains 48% linoleic acid and 30% linolenic acid. (Column 3, lines 20-40, Table 1).

The '510 patent further discloses the formation of oil and cyclodextrin complexes in weight ratios of 1:20 (oil:CD) and 1:0.3. These ratios when converted to molar ratios are as follows;

Molecular weight of  $\alpha$ - Cyclodextrin: 972.8 g/mol

$\beta$ - Cyclodextrin: 1135 g/mol

$\gamma$ - Cyclodextrin: 1297.1 g/mol

Molecular weight of Linoleic acid: 280.45 g/mol

Linolenic acid: 278.4 g/mol

Molar ratio of linoleic acid in Evening primrose oil:

$$\frac{(74.2\% \times 1g)}{(280.45g/mol)} = 0.002646 \text{ mol/g}$$

Molar ratio of linolenic acid in Evening primrose oil:

$$\frac{(8 \text{ to } 12\% \times 1g)}{(278.4g/mol)} = (0.00029 \text{ to } 0.00043) \text{ mol/g}$$

Combined molar ratio of linoleic and linolenic acid in Evening primrose oil:

$$(0.00029 \text{ to } 0.00043) + 0.002646 = 0.002936 \text{ to } 0.003076 \text{ mol/g}$$

Similarly, the combined molar ratio of linoleic acid and linolenic acid in Borage oil was calculated to be 0.002123 to 0.002339 mol/g.

Similarly, the combined molar ratio of linoleic acid and linolenic acid in Blackcurrant oil was calculated to be 0.002789 mol/g.

Number of moles of  $\alpha$ -CD in 1g of  $\alpha$ - CD:  $1g/972.8g/mol = 0.001$  moles.

Number of moles of  $\beta$ -CD in 1g of  $\beta$  -CD:  $1g/1135g/mol = 0.000881$  moles.

Number of moles of  $\gamma$ - CD in 1g of  $\beta$  - CD:  $1g/1297.1g/mol = 0.000771$  moles.

Reported weight ratio: 1:20 to 1:0.3 of Oil:CD (Column 3, lines 65-68)

Conversion of reported weight ratio of Oil:CD to molar ratio of Essential fatty acid: CD;

$$1:20 \quad 0.01:(20 \times 0.003076) = 0.01:0.062 = 1:6.2$$

$$1:0.3 \quad 0.01:(0.3 \times 0.003076) = 0.01:0.00093 = 1:0.093$$

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Thus, the disclosed molar ratios of Essential fatty acids:α-CD are in the range of 1:0.093 to 1:6.2.

Example 7 discloses a complex of γ-CD and blackcurrant oil made with 22.5 g of oil and 104.3 g of CD. The molar ratio is calculated as follows;

$$\frac{104.3\text{g } \gamma\text{-CD}}{1297.1\text{g/mol}} = 0.08047 \text{ moles}$$

$$22.5\text{g Oil} \times 0.002789 \text{ mol Essential Fatty Acid/g} = 0.0628 \text{ moles}$$

The molar ratio of essential fatty acids: γ-CD in example 7 is 1:1.28 which reads on “a mixture of these complexes” in claim 3 here. The mixtures of complexes in claim 6 and claim 7 also fall within the reported ratios of CD and oil. The weight reported weight ratios, 1:20 to 1:0.3 (Column 3, lines 65-68), are converted to molar ratios above, and found to be 1:6.2 to 1:0.093. The mixtures reported in claims 6 and 7 read on this range.

The ‘510 patent further discloses the formation of oil-in-water emulsions with γ-CD and vegetable oils containing essential fatty acids. (Column 3 line 42 to Column 4, line 12). The complex is formed at a temperature range between 20-60°C and by mixing for a period between an hour and few days (Column 4, lines 6-11). The ‘510 patent also describes the composition therein further comprising antioxidants, vitamins, preservatives, self-tanning additives, thickeners, silicone oils, and fillers as claimed. (Column 4, lines 25-28).

Thus, claims 1-3 and 6-10 are anticipated by the ‘510 patent.



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Claims 1 and 9-10 are further rejected under 35 U.S.C. 102(b) as being anticipated by Qi et. al. (U.S. Patent No. 6,638,557; PTO-892, Cited by the examiner). Qi et. al. discloses the use of cyclodextrin to form complexes with omega-3 and omega-6 fatty acids. (Abstract, and Example 2, Column 7-8). Note that omega-3 and omega-6 fatty acids are considered essential fatty acids, also known as Vitamin F. Qi et. al. discloses a method for preparing complexes of CD and fatty acids that include the mixing of fish oil and CD in an aqueous slurry to form an emulsion. (Example 1, Column 6, lines 50-60, and Example 2, Column 7 line 50 to Column 8 lines 25). The emulsion was shaken for two hours at 20°C. (Example 2, Column 7 line 50 to Column 8 lines 25).

The recitation "cosmetic or dermatological preparation" is considered the intended use of the claimed composition. Note that it is well settled that "intended use" of a composition or product, e.g., "cosmetic or dermatological preparation", will not further limit claims drawn to a composition or product, so long as the prior art discloses the same composition comprising the same ingredients in an effective amount, as the instantly claimed. See, e.g., *Ex parte Masham*, 2 USPQ2d 1647 (1987) and *In re Hack* 114, USPQ 161.

Thus, Claim 1 and 9-10 are anticipated by Qi et. al.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:



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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wimmer et. al (U.S. Patent No. 6,025,510: PTO-1449, Included by the applicant).

The disclosure of '510 patent is discussed above in the 102(b) rejection.

Wimmer et. al. does not expressly disclose the complex of CD and an essential fatty acid in the molar ratios of 3:1 or 4:1 or the formation of complexes of alpha-CD and an essential fatty acid in the specific molar ratios of 3:1 or 4:1.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to form a complex of alpha-CD and an essential fatty acid in the specific molar ratios of 3:1 or 4:1.

One of ordinary skill in the art would have been motivated to combine CD and essential fatty acids in the specific molar ratios of 3:1 or 4:1, because these specific molar ratios fall within the range taught by Wimmer et. al. If the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a *prima facie* case of obviousness exists. See *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir 1990). See MPEP § 2144.05 [4-1]. Thus, the claimed invention as a whole is clearly *prima facie* obvious over the combined teachings of the prior art.

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Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wimmer et. al (U.S. Patent No. 6,025,510; PTO-1449, Included by the applicant), in view of McCook et. al. (U.S. Patent No. 5,690,948; PTO-892, Cited by the examiner) and Sauermann et. al. (U.S. Patent No. 5,710,177; PTO-892, Cited by the examiner).

The '510 patent discloses the formation of complexes of cyclodextrin and vegetable oils that have high content of essential fatty acids, in particular linoleic acid and linolenic acid. (Column 3, lines 20-45 and Table 1). Note that essential fatty acids are also known as vitamin F. Examples of complex formation between alpha, beta and gamma cyclodextrins are given in Example 1. (column 4, line 58 to Column 5, line 14). Example 11 shows the use of additives with cyclodextrin-evening primrose oil. (Column 8, lines 1 to 14). The weight ratio of vegetable oils and CD were disclosed as between 1:20 and 1:0.3. As the calculations discussed above show, these ratios are within ranges claimed in the present invention. The '510 patent further discloses the use of the CD-vitamin F complexes in cosmetic preparations of bath products, cosmetic dispersions including creams, masks, emulsions, powders and deodorants, decorative cosmetics, sunscreen products, hair care products and repellants and soaps. (Column 4, lines 37-45). The '510 patent further discloses the use of 0.1% methylparaben, perfume oil (1.9%, 0.9%, and 1%), 13% siloxane polyglycoside, 2% isooctadecyl isononanoate, 2% white petroleum jelly, 3% laureth, 10% cocoamindopropylbetaine, 2% dimethicone. (Column 7, Example 8, Example 9 and Example 10; Weight percentage are calculated from the reported list of

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ingredients). The '510 patent further discloses the usefulness of  $\gamma$ -cyclodextrins for the stabilization of vitamins. (Column 4, lines 23-28).

The '510 patent does not expressly disclose the use of octyl palmitate, octyl stearate, polyglycerol-2 sesquiosostearate, cyclomethicone or dimethiconol, lauryl diemthicone, cyclomethicone, titanium dioxide, polymethylsilsequioxane, zinc oxide, glycerol, sodium chloride.

McCook et. al discloses skin care products comprising, octyl palmitate, octyl stearate (Column 19, Example 9B), dimethicone, dimethicanol, cyclomethicone, titanium dioxide (Column 18, Example 6), glycerol (Column 5, lines 5-10), sodium chloride. (Column 20, Example 9E), and Tospearl (Column 5, lines 8-13). Note that polymethylsilsequioxane is known by its trade name Tospearl. (GE catalog, Page 3, last column; PTO-892, Cited by the examiner).

Saurmann et. al discloses the use of zinc oxide in personal care products. (Column 5, lines 3-8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make a cosmetic composition of Claim 11 because the ingredients in the instant application were well known for their use in cosmetic formulations.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wimmer et. al (U.S. Patent No. 6,025,510; PTO-1449, Included by the applicant), in view of McCook et. al. (U.S. Patent No. 5,690,948; PTO-892, Cited

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by the examiner) and Boothroyd et. al (U.S. Patent No. 5,250,289; PTO-892, Cited by the examiner) and O'Prey et. al. (PTO-892; Cited by the examiner).

Disclosure of the '510 patent is discussed above.

The '510 patent does not expressly disclose the use of kathon, Hostacerin and Beeswax.

The '289 patent discloses the use of kathon, hostacerin and beeswax in sunscreen compositions. (Example 4, Column 4, lines 35-53).

O'Prey et. al discloses the use of Belsil in cosmetic compositions. (Page 26, lines 15-20; PTO-892 Cited by the examiner).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make a cosmetic composition of Claim 12 because the ingredients in the instant application were well known for their use in cosmetic formulations.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wimmer et. al (U.S. Patent No. 6,025,510; PTO-1449, Included by the applicant), in view of McCook et. al. (U.S. Patent No. 5,690,948; PTO-892, Cited by the examiner) and Mohammadi et. al. (U.S. Patent No. 6,649,178; PTO-892, Cited by the examiner).

Disclosure of the '510 patent is discussed above.

The '510 patent does not expressly disclose the use of cetyl alcohol or mineral oil or stearic acid or allantoin or propylene glycol or phenyltrimethicone.

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McCook et. al discloses skin care products comprising, cetyl alcohol (Example 6, Column 17), stearic acid (Column 19, Example 8), propylene glycol (Column 19, Example 9B), water (Column 19, Example 9B).

Mohammadi et. al discloses the use of mineral oil (Column 3, lines 37-43), allantoin (Column 7, Table 1, line 17) and phenyltrimethicone (Column 4, lines 3-9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make a cosmetic composition of Claim 13 because the ingredients in the instant application were well known for their use in cosmetic formulations.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wimmer et. al (U.S. Patent No. 6,025,510; PTO-1449, Included by the applicant), in view of McCook et. al. (U.S. Patent No. 5,690,948; PTO-892, Cited by the examiner) and Ferrari et.al (U.S. Patent No. 6,811,770; PTO-892, Cited by the examiner).

Disclosure of the '510 patent is discussed above.

The '510 patent does not expressly disclose the use of carbopol, glycerol, triethanolamine, stearic acid, isopropyl myristate, nexbae, arlacel, cetyl alcohol, Belsil and BHT.

McCook et. al discloses skin care products comprising carbopol (Column 5, lines 15-20), glycerol carbopol (Column 5, lines 5-10), triethanolamine carbopol (Column 19, Example 9B), stearic acid (Column 19, Example 8), cetyl

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alcohol (Example 6, Column 17), and BHT (Column 13, line 65 to Column 14, line 28).

Ferrari et. al. discloses the use of polydecenes, (Column 9, lines 1-10), and Belsil (Column 16, lines 55-65), and Arlacel (Column 19, lines 5-15). Note that Nexbase is the tradename for polydecenes. (Lohman et. al. PTO-892; Cited by the examiner).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make a cosmetic composition of Claim 14 because the ingredients in the instant application were well known for their use in cosmetic formulations.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wimmer et. al (U.S. Patent No. 6,025,510; PTO-1449, Included by the applicant), in view of Dietz et. al. (U.S. Patent No. 7,074,419; PTO-892, Cited by the examiner) and Lee et. al (U.S. Patent No. 6,908,625; PTO-892, Cited by the examiner).

Disclosure of the '510 patent is discussed above.

The '510 patent does not expressly disclose the use of stearyl glucoside, glyceryl stearate, stearyl alcohol, decyl cocoate, cetearyl ethylhexanoate and glycerol.

The '419 patent discloses skin care compositions comprising glyceryl stearate, stearyl alcohol, glycerol, (Column 13, Example 7), and decyl cocoate. (Column 12, Example 4).

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The '625 patent discloses skin care compositions comprising stearyl glucoside. (Column 7, Table 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make a cosmetic composition of Claim 15 because the ingredients in the instant application were well known for their use in cosmetic formulations.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wimmer et. al (U.S. Patent No. 6,025,510; PTO-1449, Included by the applicant), in view of Dietz et. al. (U.S. Patent No. 7,074,419; PTO-892, Cited by the examiner) and Lee et. al (U.S. Patent No. 6,908,625; PTO-892, Cited by the examiner).

Disclosure of the '510 patent is discussed above.

The '510 patent does not expressly disclose the use of stearyl glucoside, glyceryl stearate, stearyl alcohol, ethylhexyl stearate, caprylic/capric triglyceride, avocado oil and glycerol.

The '419 patent discloses skin care compositions comprising glyceryl stearate, stearyl alcohol, glycerol, (Column 13, Example 7), avocado oil (Column 12, Example 4), lactic acid (Column 9, lines 20-25), caprylic/capric triglyceride. (Column 16, Cream 2: lines 15-25) and ethylhexyl stearate. (Column 16, lines 55-65; Cream 2).



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The '625 patent discloses skin care compositions comprising stearyl glucoside. (Column 7, Table 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make a cosmetic composition of Claim 16 because the ingredients in the instant application were well known for their use in cosmetic formulations.

Claims 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wimmer et. al (U.S. Patent No. 6,025,510; PTO-1449, Included by the applicant), in view of Chevalier et. al. (U.S. Patent No. 6,284,281; PTO-892, Cited by the examiner), Lee Vatter et. al. (U.S. Patent No. 6,224,888; PTO-892, Cited by the examiner), Fourman et. al (U.S. Patent No. 4,559,225; PTO-892, Cited by the examiner) and

Disclosure of the '510 patent is discussed above.

The '510 patent does not expressly disclose the use of white beeswax, polyglyceryl-2 sesquiisostearate, octyl dimethicone or ethoxy glucoside or cyclomethicone, trimethyl siloxysilicate, iron oxide, talc, titanium dioxide, sodium chloride, and  $\gamma$ -cyclodextrin- $\alpha$ -tocopherol complex and methylchloroisothiazolinone.

The '888 patent discloses the use of cyclomethicone (Column 18, lines 29-50; Example VIII), sodium chloride (Column 21, lines 1-30), talc and iron oxide in cosmetic preparations. (Column 11, lines 45-50).

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The '281 patent discloses the use of polyglyceryl-2 sesquiisostearate for the formation of emulsions in cosmetic compositions. (Column 4, lines 24-35). The '281 patent further discloses the use of water in cosmetic combinations. (Column 6, Example 1).

Aust et. al discloses the use of methylthiazolinone and titanium dioxide in cosmetic compositions.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make a cosmetic composition of Claim 17 because the ingredients in the instant application were well known for their use in cosmetic formulations.

Claims 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wimmer et. al (U.S. Patent No. 6,025,510; PTO-1449, Included by the applicant), in view of Carola et. al. (U.S. Patent Publication No. 2004/0067894 A1, filed Sep. 23, 2003; PTO-892, Cited by the examiner).

Disclosure of the '510 patent is discussed above.

The '510 patent does not expressly disclose the use of glycerol monomyristate, stearic acid, cetyl alcohol, isopropyl palmitate and methylparaben in a cosmetic formulation.

Carola et. al. discloses the use of glyceryl monomyristate, and cetyl alcohol (Page 11, Columns 1-2, Paragraph 167), stearic acid, and methyl paraben. (Page 18, Columns 1-2, Paragraph 242, Table 2), isopropyl palmitate (Page 8, Column 2, Paragraph 125).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to make a cosmetic composition of Claim 18 because the ingredients in the instant application were well known for their use in cosmetic formulations.

One of ordinary skill in the art would have been motivated to formulate the cosmetic compositions of claims 11-18, because the optimization of the cosmetic formulation with ingredients well known in the cosmetic and dermatological art, is considered well within the competence level of an ordinary skilled artisan in cosmetic or dermatological science, involving merely routine skill in the art. It has been held that it is within the skill in the art to select optimal parameters, such as amounts of ingredients, in a composition in order to achieve a beneficial effect. See *In re Boesch*, 205 USPQ 215 (CCPA 1980).

Thus the claimed invention as a whole is clearly prima facie obvious over the combined teachings of the prior art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy P. Issac whose telephone number is 571-272-2674. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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